

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|-----------------------------------|---|------------------------|
| STEVEN C. BUTTOLPH, | : | |
| Plaintiff , | : | 1:16-cv-0072 |
| | : | |
| v. | : | Hon. John E. Jones III |
| | : | |
| PRIMECARE MEDICAL INC., <i>et</i> | : | |
| <i>al.</i> , | : | |
| Defendants. | : | |

ORDER

January 25, 2016

Upon consideration of the Plaintiff's complaint (Doc. 1), and for the reasons stated in the Court's Memorandum of the same date, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's motion (Doc. 2) for leave to proceed *in forma pauperis* is construed as a motion to proceed without full prepayment of fees and costs and is GRANTED.
2. Plaintiff's complaint is DISMISSED without prejudice pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).
3. The Clerk of Court is directed to CLOSE this case.
4. Any appeal from this order is DEEMED frivolous and not in good faith. *See* 28 U.S.C. § 1915(a)(3).¹

¹ The Court notes that “ ‘[g]enerally, an order which dismisses a complaint without prejudice is neither final nor appealable because the deficiency may be corrected by the plaintiff without affecting the cause of action.’ . . . The dispositive inquiry is whether the district court's order finally resolved the case.” *Martin v. Brown*, 63 F.3d 1252, 1257–58 (3d Cir. 1995) (quoting *Borelli v. City of Reading*, 532 F.2d 950, 951 (3d Cir. 1976)) (other citations omitted). In the matter *sub judice*, plaintiff has the right to pursue the matter in the proper forum.

s/ John E. Jones III

John E. Jones III

United States District Judge